

MT LEGISLATIVE HISTORY

Chapter 572 1987

Bill (H) 417 S _____

Original bill & hist. ☒ C

H. Committee on Business & Labor

S. Committee on Business & Industry

Hearing Date(s) Feb 05 ☒ C

Hearing Date(s) Mar 09 ☒ C

Feb 17 ☒ C

Mar 12 ☒ C

_____ ☐ C

Mar 16 ☒ C

_____ ☐ C

_____ ☐ C

Date Out Feb 19 ☒ C

Mar 16 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

Note: The Senate Status Sheet
lists a hearing date of
Mar 10. No discussion of
HB 417 was located for that
date.

CHAIRMAN--SEN. ALLEN C. KOLSTAD
NORMAL SCHEDULE==> SITE: ROOM 410

DAYS: MON THRU FRI

TIME: 10:00 A.M.

SECRETARY--CAROLYN LINDEN

--BILL NO--	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0363 HOFFMAN, BOB	2/10	3/17	3/17/87 FOREIGN INSURERS PRIVILEGE	CONCUR AS AMENDED		3/17/87
HB0372 MILLER, RON	2/23	3/17	3/17/87; 3/20/87; 3/26/87 3/31/87 INCREASE FEES COLLECTED BY INSURANCE COMMISSIONER	CONCUR		3/31/87
HB0374 PAVLOVICH, BOB	2/05	2/19	2/19/87; 2/20/87 GENERALLY AMEND MONTANA STATE LOTTERY ACT OF 1985	CONCUR AS AMENDED		2/20/87
HB0386 CODY, DOROTHY	2/10	2/20	2/20/87 CLARIFY THE RULEMAKING AUTHORITY OF THE BOARD OF CHIROPRACTORS	CONCUR		2/20/87
HB0389 BRANDEWIE, RAY	2/16	3/13	3/13/87 PROVIDE PROCESS FOR REAL ESTATE LICENSEE TO RENEW LICENSE AFTER LAPSE	CONCUR		3/13/87
HB0401 QUILICI, JOE	2/10	3/10	3/10/87 MAINTENANCE ELECTRICIANS EXEMPT FROM LICENSING	CONCUR		3/10/87
HB0411 HARP, JOHN	2/10	3/10	3/10/87 CHANGING THE DEFINITION OF LINE TRUCK	CONCUR		3/10/87
HB0417 BROWN, JAN	3/02	3/09	3/9/87; 3/10/87; 3/12/87 3/16/87 PROVIDE PREFERENCE TO BIDDERS WITH MONTANA-MADE GOODS IN AWARDING CONTRACTS	CONCUR AS AMENDED		3/16/87
HB0426 CAMPBELL, BUD	2/17	3/18	3/18/87; 3/20/87 REVISE GOVERNMENT INSURANCE	CONCUR AS AMENDED		3/20/87
HB0433 SANDS, JACK	2/10	3/03	3/3/87 GENERALLY REVISE INSURANCE LAWS	CONCUR		3/3/87
HB0437 SWYSGOOD, CHUCK	2/12	3/18	3/18/87; 3/20/87; 3/23/87 AUTHORITY FOR CEASE AND DESIST ORDERS BY INSURANCE COMMISSIONER	CONCUR AS AMENDED		3/23/87

HOUSE BILL NO. 417

INTRODUCED BY J. BROWN, GRADY, VINCENT, LORY, D. BROWN,
MEYER, GOULD, SCHYE, EUDAILY, MAZUREK, QUILICI, HAFHEY

IN THE HOUSE

JANUARY 23, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & LABOR.
FEBRUARY 19, 1987	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED. STATEMENT OF INTENT ADOPTED.
FEBRUARY 20, 1987	PRINTING REPORT.
FEBRUARY 21, 1987	SECOND READING, DO PASS.
FEBRUARY 23, 1987	ENGROSSING REPORT. THIRD READING, PASSED. AYES, 74; NOES, 25. TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 2, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY.
MARCH 18, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 21, 1987	SECOND READING, CONCURRED IN AS AMENDED.
MARCH 24, 1987	ON MOTION, CONSIDERATION PASSED FOR THE DAY.
MARCH 25, 1987	THIRD READING, CONCURRED IN. AYES, 49; NOES, 0. RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 7, 1987

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

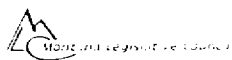
APRIL 8, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

1 House BILL NO. 417
 2 INTRODUCED BY J. Brown Sen. Vincent
 3 Joe Brown Sen. Schuyler
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PROVISIONS
 5 CONCERNING PREFERENCES FOR RESIDENT BIDDERS IN AWARDING
 6 PUBLIC CONTRACTS; PROVIDING A 5 PERCENT PREFERENCE FOR A
 7 RESIDENT BIDDER WHOSE GOODS ARE MONTANA-MADE WHEN COMPETING
 8 AGAINST A NONRESIDENT BIDDER; REQUIRING CERTAIN BIDDERS TO
 9 SUBMIT AN AFFIDAVIT SPECIFYING THE BASIS FOR CLAIMING A
 10 PREFERENCE; PROVIDING A PENALTY FOR SUBMITTING A FALSE
 11 AFFIDAVIT; REQUIRING THE DEPARTMENT OF ADMINISTRATION TO
 12 ADOPT RULES FOR ADMINISTERING THE PREFERENCES; AMENDING
 13 SECTIONS 18-1-101 THROUGH 18-1-103, 18-1-112, 18-5-308, AND
 14 20-15-403, MCA; AND REPEALING SECTION 18-1-111, MCA."
 15
 16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 17 Section 1. Section 18-1-101, MCA, is amended to read:
 18 "18-1-101. ~~Department---of---administration---~~defined
 19 Definitions. (1) Unless the context requires otherwise, in
 20 this title "department" means the department of
 21 administration provided for in Title 2, chapter 15, part 10.
 22 (2) Unless the context requires otherwise, in this
 23 part the following definitions apply:
 24 (a) "Goods" means supplies, equipment, materials,
 25 commodities, and specially manufactured products.

1 (b) "Montana-made" means manufactured or produced in
 2 this state and made with the:
 3 (i) use of parts, equipment, or supplies of which 50%
 4 or more were manufactured or produced in this state; or
 5 (ii) employment of persons of whom 50% or more are bona
 6 fide residents of Montana as defined in 18-2-401.
 7 (c) "Nonresident bidder" means a bidder whose
 8 residence is not in this state as determined under 18-1-103.
 9 (d) "Public agency" means a department, commission,
 10 council, board, bureau, committee, institution, agency,
 11 government corporation, or other entity, instrumentality, or
 12 official of the legislative, executive, or judicial branch
 13 of this state and its political subdivisions, including the
 14 board of regents and the Montana university system.
 15 (e) "Resident bidder" means a bidder whose residence
 16 is in this state as determined under 18-1-103."
 17 Section 2. Section 18-1-102, MCA, is amended to read:
 18 "18-1-102. State contracts to lowest resident bidder.
 19 (1) In order to provide for an orderly administration of the
 20 business of the state of Montana in awarding public
 21 contracts for materials, supplies, equipment, the purchase
 22 of goods and for construction, repair, and public works of
 23 all kinds, it shall be the duty of each--board--commission--
 24 officer--or--individual--charged--by--law--with--the
 25 responsibility for the execution of the contract--on--behalf



~~of the state, board, commission, political subdivision,~~
~~agency, school district, or a public corporation of the~~
~~state of Montana to a public agency shall award such:~~

(a) a public contract for construction, repair, or
public works to the lowest responsible resident bidder who
is a resident of the state of Montana and whose bid is not
more than 3% higher than that of the lowest responsible
bidder who is a nonresident of this state; does not exceed
the applicable percentage when compared to the lowest
responsible nonresident bidder. The applicable percentage is
the greater of:

(i) 3%; or

(ii) the percentage that applies to a resident bidder
in the award of a public contract for construction, repair,
or public works in the nonresident bidder's state of
residence.

~~(2)(b) In awarding contracts a public contract for the~~
~~purchase of products, materials, supplies, or equipment,~~
~~such board, commission, officer, or individual shall award~~
~~the contract goods, if the goods are comparable in quality~~
~~and performance, to any such the lowest responsible resident~~
~~whose offered materials, supplies, or equipment are~~
~~manufactured or produced in this state by Montana industry~~
~~and labor and bidder whose:~~

(i) bid is not more than 3% higher than that of the

lowest responsible resident nonresident bidder ~~whose offered~~
~~materials, supplies, or equipment are not so manufactured or~~
~~produced, provided that such products, materials, supplies,~~
~~and equipment are comparable in quality and performance;~~

(ii) offered goods are Montana-made and whose bid is
not more than 5% higher than that of the lowest responsible
nonresident bidder; or

(iii) offered goods are Montana-made and whose bid is
not more than 3% higher than that of the lowest responsible
resident bidder whose offered goods are not Montana-made.

~~(3) In awarding contracts for construction, repair,~~
~~and public works of all kinds, bids received from~~
~~nonresident bidders are subject to the 3% preference, or~~
~~that percent that applies to a Montana bidder in the award~~
~~of public contracts in the nonresident bidder's state of~~
~~residence, whichever is greater.~~

(4)(2) This requirement shall prevail. The preferences
in this section apply:

(a) whether the law requires advertisement for bids or
does not require advertisement for bids; and

(b) it shall apply to contracts involving funds
obtained from the federal government unless expressly
prohibited by the laws of the United States or regulations
adopted pursuant thereto."

Section 3. Section 18-1-103, MCA, is amended to read:

1 "18-1-103. Residence defined. (1) For the purpose of
2 18-1-102, 18-1-103, and 18-1-112, the word "resident" shall
3 include actual residence of an individual within this state
4 for a period of more than 1 year immediately prior to
5 bidding.

6 (2) In a partnership enterprise or an association, the
7 majority of all partners or association members shall have
8 been actual residents of the state of Montana for more than
9 1 year immediately prior to bidding.

10 (3) Domestic corporations organized under the laws of
11 the state of Montana are prima facie eligible to bid as
12 residents, but this qualification may be set aside and a
13 successful bid disallowed where it is shown to the
14 satisfaction of the board, commission, officer, or
15 individual charged with the responsibility for the execution
16 of such contract that said corporation is a wholly owned
17 subsidiary of a foreign corporation or that said corporation
18 was formed for the purpose of circumventing the provisions
19 relating to residence.

20 (4) Notwithstanding the foregoing, any bidder on a
21 contract for the purchase of products, materials, supplies,
22 or equipment goods, whether an individual, partnership, or
23 corporation, foreign or domestic and regardless of ownership
24 thereof, whose interior materials, supplies, or equipment
25 goods are manufactured or produced in this state by industry

1 located in Montana and Montana labor shall be deemed to be
2 Montana-made is a resident for the purpose of 18-1-102,
3 18-1-103, and 18-1-112."

4 Section 4. Section 18-1-112, MCA, is amended to read:

5 "18-1-112. Montana product preference provisions. (1)
6 Each contract awarded by ~~any political subdivision, school~~
7 ~~district, public corporation, or a public~~ agency ~~of the~~
8 ~~state of Montana shall~~ must contain among its provisions a
9 requirement that in all instances ~~products manufactured or~~
10 ~~produced in this state by Montana industry and labor shall~~
11 Montana-made goods must be preferred for use in all projects
12 ~~and in all materials, supplies, and equipment procured~~ if
13 such ~~products, materials, equipment, and supplies~~ goods are
14 comparable in price and quality.

15 (2) It is the intent of 18-1-102, 18-1-103, and this
16 section that, whenever possible, ~~products manufactured and~~
17 ~~produced in this state which~~ Montana-made goods that are
18 suitable substitutes for products goods manufactured or
19 produced outside the state and comparable in price, quality,
20 and performance ~~shall be~~ are preferred for use in all
21 projects and in all state institutions.

22 (3) Failure to comply with the law in this respect
23 ~~shall disqualify~~ disqualifies such contractor as a qualified
24 bidder for future contracts with the ~~state of Montana, any~~
25 ~~legal subdivision of the state of Montana, any school~~

1 district, public corporation, or agency for a period of 2
2 years.

3 (4) The preference given to ~~Montana--products--shall~~
4 apply Montana-made goods applies to contracts involving
5 funds obtained from the federal government unless expressly
6 prohibited by the laws of the United States or regulations
7 adopted pursuant thereto."

8 Section 5. Section 18-5-308, MCA, is amended to read:

9 "18-5-308. Construction with other sections.
10 Procurement from small businesses under this part is subject
11 to all other statutes governing state procurement and all
12 rules promulgated thereunder, as now or hereafter amended,
13 except that in case of conflict this part governs and the
14 provisions set forth in 18-1-102, ~~18-1-111~~, and 18-1-112
15 shall not apply."

16 Section 6. Section 20-15-403, MCA, is amended to read:

17 "20-15-403. Applications of other school district
18 provisions. (1) When the term "school district" appears in
19 the following sections outside of Title 20, the term
20 includes community college districts and the provisions of
21 those sections applicable to school districts apply to
22 community college districts: 2-9-101, 2-9-111, 2-9-316,
23 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604,
24 7-6-2801, 7-7-123, 7-8-2214, 7-8-2215, 7-8-2216, 7-11-103,
25 7-12-4106, 7-13-110, 7-13-210, 7-15-4206, 10-1-703,

1 15-1-101, 15-6-204, 15-16-101, 15-16-601, 15-18-108,
2 15-55-106, 15-70-301, 15-70-322, 17-5-101, 17-5-202,
3 17-6-103, 17-6-204, 17-6-213, 17-7-201, ~~18-1-102, 18-1-112~~,
4 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114, 18-2-404,
5 18-2-432, 18-5-205, 19-1-102, 19-1-811, 22-1-309, 25-1-402,
6 27-18-406, 33-20-1104, 39-3-104, 39-4-107, 39-31-103,
7 39-31-304, 39-71-116, 39-71-117, 39-71-2106, 39-71-2206,
8 40-6-237, 41-3-1132, 49-3-101, 49-3-102, 53-20-304,
9 77-3-321, 82-10-201, 82-10-202, 82-10-203, 85-7-2158, and
10 90-6-208 and Rules 4D(2)(g) and 15(c), M.R.Civ.P., as
11 amended.

12 (2) When the term "school district" appears in a
13 section outside of Title 20 but the section is not listed in
14 subsection (1), the school district provision does not apply
15 to a community college district."

16 NEW SECTION. Section 7. Bidder to submit affidavit --
17 penalty. (1) A bidder on a public contract for goods who is
18 claiming a preference under this part shall submit to the
19 public agency, together with the bid, an affidavit
20 specifying in detail, as determined by rule by the
21 department, the basis on which the bidder claims the
22 preference.

23 (2) If the public agency determines that the bidder
24 has submitted a false affidavit under subsection (1), the
25 bidder is disqualified as a bidder for future public

1 contracts for goods with any public agency for a period of 5
2 years from the date of the determination.

3 NEW SECTION. Section 8. Rules. The department shall
4 adopt rules necessary to administer the preferences provided
5 in this part. The department's rules apply to all public
6 employers.

7 NEW SECTION. Section 9. Repealer. Section 18-1-111,
8 MCA, is repealed.

9 NEW SECTION. Section 10. Codification instruction.
10 Sections 7 and 8 are intended to be codified as an integral
11 part of Title 18, chapter 1, part 1, and the provisions of
12 Title 18, chapter 1, part 1, apply to sections 7 and 8.

-End-

In compliance with a written request, there is hereby submitted a Fiscal Note for HB417, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act revising the provisions concerning preferences for resident bidders in awarding public contracts; providing a 5% preference for a resident bidder whose goods are Montana-Made when competing against a nonresident bidder; requiring certain bidders to submit an affidavit specifying the basis for claiming a preference; providing a penalty for submitting a false affidavit; requiring the Department of Administration to adopt rules for administering the preferences; amending Sections 18-1-101 through 18-1-103, 18-1-112, 18-5-308, and 20-15-403, MCA; and repealing Section 18-1-111, MCA.

ASSUMPTIONS:

1. Significantly impacts statewide purchases of food and paint, and \$1.25 million of purchases made by Department of Highways.
2. Estimates are annualized.
3. State agencies will pay 2% more for goods.
4. Current preference is 3%. This is an additional 2%.

FISCAL IMPACT:

	<u>FY88</u>			<u>FY89</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Increased						
Operating Expenses	\$3,747,976	\$3,822,936	\$ 74,960	\$3,747,976	\$3,822,936	\$ 74,960

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

This will affect all government purchasing activities in terms of determining preference and awarding contracts to vendors who fall within the applicable percentages (3% for Montana vendors; 5% for in-state products).

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Potential exists for out-of-state bidders to be forced out of competition with this additional preference. Within the category of food, a resulting increase of 12% (\$212,454), can be expected. This amount is equivalent to the business out-of-state food vendors are receiving, even with the 3% preference.

TECHNICAL OR MECHANICAL DEFECTS IN PROPOSED LEGISLATION OR CONFLICTS WITH EXISTING LEGISLATION:

The possibility of a non-resident vendor bidding "Montana Made" goods or providing Montana labor is not addressed. No clear award could be made under these circumstances.

 DATE 1/30/87
 DAVID L. HUNTER, BUDGET DIRECTOR
 Office of Budget and Program Planning

 DATE 1/31/87
 JAN BROWN, PRIMARY SPONSOR
 Fiscal Note for HB417, as introduced.

HB 417

CONSIDERATION OF HOUSE BILL NO. 806: Rep. Bob Pavlovich, House District 70, Butte-Silver Bow, sponsor, said the bill generally revises the laws relating to the Montana life and health insurance guaranty association. The association is a nonprofit legal entity comprised of health and life insurers authorized to do business in the state. The association is organized to protect policyholders and insureds against the insurer's failure to meet contractual obligations because of impairment. He said the bill was a committee bill and was drafted in the Business and Labor committee in the House. It was requested by the Montana Life and Health Guaranty Association. He said he had one amendment on page 8, line 22; eliminate the word "domestic"

PROPOSERS: Kathy Irigoin, State Auditor and Commissioner of Insurance Office, presented written testimony regarding HB 806. (EXHIBIT 4)

Mike Mulroney, Montana Life and Health Insurance Guaranty Association attorney, said he would answer any questions of the committee and they supported HB 806 with the change mentioned by Ms. Irigoin with regard to the word "domestic".

Tom Hopgood, representing the American Council of Life Insurance and the Health Insurance Association of America, submitted technical amendments and briefly explained them to the committee. (EXHIBIT 5) He asked the committee to give it a do pass.

OPPOSERS: There were no opposers.

DISCUSSION OF HOUSE BILL NO. 806: Chairman Kolstad asked for questions from the committee.

Sen. Walker questioned Rep. Pavlovich about the amendments, however, he said he had not had time to go over them and in talking to Ms. Irigoin and Mr. Mulroney they objected to the amendments. (This refers to the amendments in Exhibit 5.)

Chairman Kolstad asked Mr. Mulroney to address the objection to the amendments. He replied that they had done a great deal of work on the bill before it was presented in the House and they had also discussed it with the insurance commissioner. He said they were satisfied with the bill; they looked at the model act before this and they just tried to simplify it. He said he was convinced the bill did the job they intended it to do. Ms. Irigoin also concurred with Mr. Mulroney on the amendments.

There being no further questions, Rep. Pavlovich closed on HB 806.

CONSIDERATION OF HOUSE BILL NO. 417: Rep. Jan Brown, House District 46, Helena, sponsor, stated that the bill revises the provisions of law concerning preferences for resident bidders. It allows a 5% preference to a resident bidder selling Montana

made products if competing against a non-resident bidder. It requires a bidder claiming a preference to have on file or submit an affidavit specifying the basis for claiming the preference and provides a penalty for submitting a false affidavit.

PROPONENTS: Pat Melby, attorney from Helena representing Columbia Paint Company, said the bill was drafted at the request of Columbia Paint but it was not a Columbia Paint bill. He pointed out there are a number of other Montana manufacturers who are in support of the bill and would benefit by it. They were trying to clarify the application of the preferences as they now exist. Mr. Melby distributed testimony on HB 417 for illustrative purposes. (EXHIBIT 6) He said about 30 states have preference and about 12 have percentage preference as in this bill; about 10 of those have 5% and some up to a 10% preference, such as Hawaii. Another 20 states have what is called reciprocal preferences. He also submitted a proposed amendment to HB 417, (EXHIBIT 7) and a copy of the present statute, 18-1-102 (EXHIBIT 8)

Eric Schindler, Financial Administrative Vice President for Columbia Paint, Helena, said they had pursued this bill in trying to clarify the existing legislation. He said they have four different legal opinions on current statutes. They don't know what they are dealing with and want it clarified. He said they currently have stores in four states; Montana, Idaho, Washington and Wyoming. He agreed with the testimony of Mr. Melby. He asked the committee to support the bill.

Al Eli, President and Chief Executive Officer of Northern School Supply in Great Falls, commended the people for doing some very fine work on cleaning up an area that needed clarifying for a long time. He said the corporation is more than 50% owned by Montana residents and has been operating in the state of Montana since 1932. He said they have always suffered the 3% penalty because they are a foreign corporation having been incorporated in North Dakota in 1911. This means, in some instances, that some school districts have had to pay 3% more for a product from a bidder across the street than they would have from Northern School Supply. He felt it was time to eliminate this penalty for state and local public agencies, however, he said he was a proponent of the bill and not an opponent. He proposed that HB 417 get a recommendation do pass with an amendment to protect public agencies from the type of penalties that he outlined. When a bonafide Montana business, even though a foreign corporation, is bidding, it should be permitted to bid as a resident bidder without the 3% penalty. He suggested an amendment to consider an out of state bidder should be treated as a resident bidder if the branch has had a bona fide business operating within the state for a period of not less than 1 year, owns real estate or pays rent to an

owner who, in turn, pays real property tax on that rental and has at least 10 employees on their payroll and the payroll is subject to Montana state withholding tax. He asked the committee to consider the above suggested amendment.

James Hodge, Columbia Chemical, said they were in the business of manufacturing laundry chemicals and cleaning chemicals and the only one in the state of Montana. He urged support of HB 417.

K.M. Kelly, Milk Industry Processors, appeared in support of HB 417 and submitted a written statement. (EXHIBIT 9)

Jack D. Harrison, Branch Manager, Johnson Controls, Inc., Great Falls, said that Johnson Controls is a national company but has 120 branches throughout the U.S. and Canada. The Great Falls branch has been in operation since 1952 and the company has been providing services in Montana since the turn of the century and presently employs 24 persons. He supported the bill but asked that the committee consider Mr. Eli's proposed amendment concerning out of state corporations so they wouldn't be subject to the 3% penalty.

OPPONENTS: A letter was introduced as EXHIBIT 10 from Patrick E. McKelvey, Helena, and will be included in the minutes.

DISCUSSION OF HOUSE BILL NO. 417: Chairman Kolstad called for questions from the committee.

Sen. Meyer asked Mr. Melby to comment on the proposed amendment. Mr. Melby replied that there were two things they determined not to do in the bill; they weren't going to get involved in the preference requirements on public contractors, the other one was they didn't want to fool with the definition of resident. He suggested that some discretion could maybe be given to the department and they could determine who is a resident and who is not - give them some rulemaking authority to implement some of this language.

Sen. Walker questioned Mr. Harrison where the profit goes from his store. Mr. Harrison said it ultimately ends up back with Johnson Controls. Sen. Walker then asked where the profits go from Northern School Supply. Mr. Eli said the profits that aren't kept directly here and spent here, or 57% are spent right here and go back into the state of Montana. They are more than 57% owned by Montana residents and if it does pay dividends it pays them to Montana residents. Approximately 60% of Northern School Supply's profit, this year, was made in the state of North Dakota and at least 57% of that would come here to the state of Montana.

Chairman Kolstad asked Mr. Eli how many businesses would be affected with the proposed amendment. Mr. Eli said he was not sure how many. Chairman Kolstad then stated that he assumed the Fiscal Note probably wouldn't be affected appreciably by the amendment. Mr. Melby stated that he did not believe it would be because the Fiscal Note was the maximum that could possibly ever happen and said there would still be a tremendous amount of competition among all the bidders. He said he did not have a problem with the amendment, only that it would not apply to the public works portion.

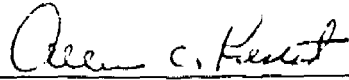
Chairman Kolstad asked if the amendment took care of it adequately by excluding the public works segment. Sen. Boylan suggested the committee give the proponents some time to work on the amendment to assure that this is taken care of. Chairman Kolstad remarked that they would not take action on the bill as it was a very substantive piece of legislation and agreed with Sen. Boylan's suggestion.

Sen. Thayer wondered if, although they were going to help some individuals would they also be hurting other companies in Montana with the preference. Mr. Melby said there may be some that would experience an adverse effect but most of them would be helped. Mr. Eli said there is a 5% preference penalty at the present time. This bill, he thought, said the "maximum of 3% or the preference penalty that is proposed by the neighboring state" - this puts Montana on the same footing as Wyoming. North Dakota has no preference law. Montana provides 3% preference for a resident over a non-resident. If they have a higher preference then that is applied.

There being no further questions from the members, Rep. Brown closed her presentation of HB 417 saying that she and Pat Melby were very willing to work with the committee to work on the amendments.

The next meeting of the Business and Industry committee was scheduled to meet on Tuesday, March 10, 1987.

The meeting adjourned at 12:15 p.m.


SEN. ALLEN C. KOLSTAD, CHAIRMAN

Business & Industry COMMITTEE
50th LEGISLATIVE SESSION -- 1987

Date 3/9/87

NAME	PRESENT	ABSENT	EXCUSED
ALLEN C. KOLSTAD, CHAIRMAN	✓		
TED NEUMAN, VICE CHAIRMAN	✓		
PAUL BOYLAN	✓		
TOM HAGER	✓		
HARRY H. McLANE	✓		
DARRYL MEYER	✓		
GENE THAYER	✓		
MIKE WALKER	✓		
CECIL WEEDING	✓		
BOB WILLIAMS			✓

Each day attach to minutes.

DATE: 3/9/87

COMMITTEE ON Business & Industry

VISITORS' REGISTER

[illegible]

HOUSE BILL 417

The following are examples of how the current preference law effects the awarding of contracts for the purchase of goods by public agencies and how the changes in the preference law proposed in House Bill 417 would effect the awarding of those contracts.

For illustrative purposes:

Montana Widget is a resident bidder with Montana Made goods;
ABC Distributing is a resident bidder with non-Montana made goods;

Out-of-State, Inc., is a nonresident bidder.

EXAMPLE 1: Current Law*

Montana Widget	\$103.00
ABC Distributing	100.00

Difference in bids - 3%: Contract to Montana Widget.

EXAMPLE 2: Current Law*

ABC Distributing	\$103.00
Out-of-State, Inc.	100.00

Difference in bids - 3%: Contract to ABC Distributing

EXAMPLE 3: Current Law*

Montana Widget	\$103.00
Out-of-State, Inc.	100.00

Difference in bids - 3%: contract to Montana Widget.

EXAMPLE 4: Current Law - Attorney General's interpretation

Montana Widget	\$102.00
ABC Distributing	101.00
Out-of-State, Inc.	100.00

Difference in bids of Montana Widget and ABC Distributing - .9%

Difference in bids of Montana Widget and Out-of-State, Inc. - 2%

Difference in bids of ABC Distributing and Out-of-State, Inc. - 1%

Contract goes to ABC Distributing: Under Attorney general's opinion Montana Widget does not get a 3% preference over ABC Distributing when Out-of-State, Inc., is also bidding.

* Under House Bill 417, these examples would be the same.

EXAMPLE 5: Current Law - Our interpretation

Montana Widget	\$106.00
ABC Distributing	103.00
Out-of-State, Inc.	100.00

Difference in bids of Montana Widget and ABC Distributing - 3%

Difference in bids of Montana Widget and Out-of-State, Inc. - 6%

Difference in bids of ABC Distributing and Out-of-State, Inc. - 3%

Contract to Montana Widget: ABC Distributing has a preference over Out-of-State, Inc., as its bid is not more than 3% higher, so Out-of-State, Inc., is out and Montana Widget has a 3% preference over ABC distributing.

EXAMPLE 6: House Bill 417

Montana Widget	\$105.00
ABC Distributing	103.00
Out-of-State, Inc.	100.00

Difference in bids of Montana Widget and ABC Distributing - 1.9%

Difference in bids of Montana Widget and Out-of-State, Inc. - 5%

Difference in bids of ABC Distributing and Out-of-State, Inc. - 3%

Contract to Montana Widget: Montana Widget's bid is not more than 3% higher than ABC Distributing's nor more than 5% higher than Out-of-State, Inc.'s.

EXAMPLE 7: House Bill 417

Montana Widget	\$105.10
ABC Distributing	103.00
Out-of-State, Inc.	100.00

Difference in bids of Montana Widget and ABC Distributing - 2.04%

Difference in bids of Montana Widget and Out-of-State, Inc. - 5.1%

Difference in bids of ABC Distributing and Out-of-State, Inc. - 3%

Contract to ABC Distributing: While Montana Widget's bid is not more than 3% higher than ABC Distributing's nor more than 5% higher than Out-of-State, Inc.'s.

EXAMPLE 8: House Bill 417

Montana Widget	\$105.00
ABC Distributing	101.00
Out-of-State, Inc.	100.00

Difference in bids of Montana Widget and ABC Distributing - 3.9%.

Difference in bids of Montana Widget and Out-of-State, Inc. - 5%

Difference in bids of ABC Distributing and Out-of-State, Inc. - 1%

Contract to ABC Distributing: While Montana Widget's bid is not more than 5% higher than Out-of-State, Inc.'s, it is more than 3% higher than ABC Distributing's.

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 6

DATE 3-9-87

BILL NO. H.B. 417

PROPOSED AMENDMENT TO HOUSE BILL 417

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 1
DATE 3-9-87
BILL NO. AB 417

I. Page 4, Line 15

Following: "5%"

Insert: "; and, when both subsections (b)(ii) and (iii) are applicable to bids for a contract, the contract shall be awarded to the resident bidder whose offered goods are Montana-made only if its bid is not more than 3% higher than that of the resident bidder whose offered goods are not Montana-made and not more than 5% higher than that of the nonresident bidder"

18-1-102. State contracts to lowest resident bidder. (1) In order to provide for an orderly administration of the business of the state of Montana in awarding contracts for materials, supplies, equipment, construction, repair, and public works of all kinds, it shall be the duty of each board, commission, officer, or individual charged by law with the responsibility for the execution of the contract on behalf of the state, board, commission, political subdivision, agency, school district, or a public corporation of the state of Montana to award such contract to the lowest responsible bidder who is a resident of the state of Montana and whose bid is not more than 3% higher than that of the lowest responsible bidder who is a nonresident of this state.

(2) In awarding contracts for purchase of products, materials, supplies, or equipment, such board, commission, officer, or individual shall award the contract to any such resident whose offered materials, supplies, or equipment are manufactured or produced in this state by Montana industry and labor and whose bid is not more than 3% higher than that of the lowest responsible resident bidder whose offered materials, supplies, or equipment are not so manufactured or produced, provided that such products, materials, supplies, and equipment are comparable in quality and performance.

(3) In awarding contracts for construction, repair, and public works of all kinds, bids received from nonresident bidders are subject to the 3% preference, or that percent that applies to a Montana bidder in the award of public contracts in the nonresident bidder's state of residence, whichever is greater.

(4) This requirement shall prevail whether the law requires advertisement for bids or does not require advertisement for bids, and it shall apply to contracts involving funds obtained from the federal government unless expressly prohibited by the laws of the United States or regulations adopted pursuant thereto.

NAME: S. M. Kelly DATE: 3/9/87
ADDRESS: Helena, MT 59601 SENATE BUSINESS & INDUSTRY
PHONE: 458-5861 EXHIBIT NO. 9
DATE 3-9-87
BILL NO. HB 417

REPRESENTING WHOM? Montana Dairy Industry - Processors
APPEARING ON WHICH PROPOSAL: HB 417

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS:

This Bill will clear up some inconsistencies
in the present purchasing act and allows the
Department of Administration to promulgate rules
for bidding on state contracts both by resident
and non-resident bidders.

S. M. Kelly

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Mr. Chairman and members of the committee.

Unfortunately for me I had to be out of town and unable to testify on HB 417. Please accept this written testimony in opposition to the bill.

In the house floor debate we heard that this bill is intended to correct a situation that under existing law would allow two preferences to be applied. Proponents say they believe that the 3% resident preference and the 3% for Montana made can be stacked providing a 6% overall preference. The proponents claim that they are willing to give up 1% if in fact this bill giving them a 5% bid preference is passed. The stacking of preferences however, is a situation that does not exist. Under existing statute, an Attorney General opinion of November 1984 (copy attached) clearly states that only one preference can be applied. That means the current actually administered preference is 3%. If this bill is passed it would in fact automatically grant one sole paint company in Montana a 2% bid preference over all other resident Montana bidders. They are not giving up a thing. They are gaining a lot.

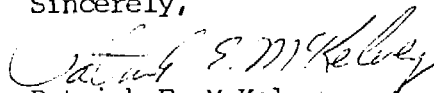
The bill is presented as a measure to protect and stimulate Montana business. In the paint business it is in fact a good restraint of trade on many small Montana businesses. Resident businesses across the State who are vendors of brands of goods not made in Montana, but who's nationally recognized brands are used in State, County, City, and School Districts in their market area. This bill can be seen as just one more nail in their business coffin. The State cannot afford it. The fiscal note says that the State will in fact pay more, \$75,000.00 per year more, just in the two products it addressed, paint and foodstuffs.

The bill goes on to say that each contract awarded by a public agency for construction projects must contain the requirement that Montana made goods must be preferred on all projects. It provides a penalty of 2 years prohibition from bidding on public projects if the contractor does not use the Montana made goods. How enforceable is that?

I certainly have no complaint with every effort to help Montana business. We need all the help we can get right now. This bill does not help the majority of Montana business and does in fact take the majority out of the public bidding process. If passed it will be bad legislation and I would think something that could be challenged in court as restraint of trade. It certainly would send the message to the majority of Montana businessmen that we really are not trying to build Montana as a whole, but selectively.

Hopefully you will give this a do not pass recommendation. If you would like more information I will be happy to discuss this with you after I return Weds. March 11, 1987.

Sincerely,



Patrick E. McKelvey
124 E. Lyndale
Helena, Mt.
442-6870 or 443-2253

DATE 3/9/87
BILL NO. HB 417

RECEIVED

NOV 16 1984

DEPT. OF ADMINISTRATION
DIRECTORS OFFICE

OPINION NO. 79

VOLUME NO. 40

CONTRACTS - Preference for resident contractors;
MONTANA CODE ANNOTATED - Sections 1-2-101, 18-1-102(1)
and (2), 18-1-103(4);
OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No.
59 (1977).

HELD: A resident bidder whose materials are
manufactured in Montana by Montana labor may
not be awarded a state contract under section
18-1-102, MCA, when his bid is more than 3%
higher than that of the lowest responsible
nonresident bidder.

2 November 1984

Morris Brusett, Director
Department of Administration
Room 155, Sam W. Mitchell Building
Helena MT 59620

Dear Mr. Brusett:

You have requested my opinion on a question which I have
stated as follows:

May a resident bidder whose materials are
manufactured in Montana by Montana labor be
awarded a state contract under section
18-1-102, MCA, when his bid is more than 3%
higher than that of the lowest responsible
nonresident bidder?

Section 18-1-102, MCA, deals with the awarding of
certain state contracts. It provides, in pertinent
part:

(1) In order to provide for an orderly
administration of the business of the state of
Montana in awarding contracts for materials,
supplies, equipment, construction, repair, and
public works of all kinds, it shall be the
duty of each board, commission, officer, or
individual charged by law with the
responsibility for the execution of the
contract on behalf of the state, board,
commission, political subdivision, agency,
school district, or a public corporation of
the state of Montana to award such contract to
the lowest responsible bidder who is a
resident of the state of Montana and whose bid
is not more than 3% higher than that of the

SENATE BUSINESS & INDUSTRY
EXHIBIT NO 10

lowest responsible bidder who is a nonresident of this state.

(2) In awarding contracts for purchase of products, materials, supplies, or equipment, such board, commission, officer, or individual shall award the contract to any such resident whose offered materials, supplies, or equipment are manufactured or produced in this state by Montana industry and labor and whose bid is not more than 3% higher than that of the lowest responsible resident bidder whose offered materials, supplies, or equipment are not so manufactured or produced, provided that such products, materials, supplies, and equipment are comparable in quality and performance. [Emphasis added.]

....

Subsection (1) grants a preference to a resident with the lowest responsible bid over a nonresident with the lowest responsible bid, so long as the resident's bid is not more than 3% higher than that of the nonresident. (For a discussion of the meaning of the phrase "lowest responsible bidder" see 37 Op. Att'y Gen. No. 59 (1977).) Subsection (2) provides that a preference be granted to a resident with the lowest responsible bid whose supplies are manufactured in-state by Montana labor over a resident with the lowest responsible bid whose supplies are manufactured out-of-state. With respect to contracts for the purchase of products, any bidder whose materials are manufactured in Montana by Montana labor is considered a resident. 5 18-1-103(4), MCA.

*Current
situation*

The confusion surrounding the statute arises where the bidders on a contract are made up of both residents and nonresidents and the bids are fairly close in dollar amounts. In the example cited in the legal memorandum that accompanied your opinion request there are two resident bidders and one nonresident bidder. The lowest bidder is an out-of-state company. The first resident company's bid is within 3% of the nonresident's bid; however, the materials offered by that resident company are not manufactured in-state. Nevertheless, applying subsection (1) of section 18-1-102, MCA, the first resident bidder would be awarded the contract. However, the bid of the second resident bidder, whose materials are manufactured in-state, is within 3% of the first resident bidder who was awarded the contract under subsection (1). Your specific question concerns whether, applying subsection (2), the resident bidder whose materials are manufactured in-state should be granted preference over the resident bidder who prevailed under subsection (1). I will use the hypothetical situation that you provided in your opinion as an example. The dollar amounts are as follows:

*Can only be
1 - 3% preference*

- Bid of resident using out-of-state materials = \$101.00.
- Bid of resident using in-state materials = \$103.00.
- Bid of nonresident = \$99.00.

cannot
still two
preferences.

If both subsections (1) and (2) of section 18-1-102, MCA, are applied to this example, the operation of subsection (1) will result in the awarding of the contract to the resident with the bid of \$101, who will, in turn, lose out to the resident with the bid of \$103, by operation of subsection (2). The final award of the contract will thus go to a resident whose bid is more than 3% higher than the bid of the nonresident. Such a result is in direct conflict with subsection (1).

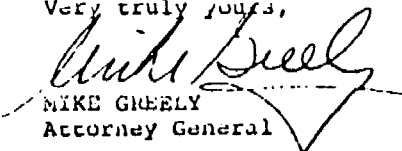
It is a rule of statutory construction that a statute is to be construed as a whole, with effect being given, if possible, to every provision so that conflicting parts are made to harmonize. See § 1-2-101, MCA; Montana Automobile Association v. Greely, 38 Sc. Rptr. 1174, 1180, 632 P.2d 300, 306 (1981); McClanathan v. State, 186 Mont. 56, 61, 606 P.2d 507, 510 (1980); Yurkovich v. Industrial Accident Board, 132 Mont. 77, 84, 314 P.2d 866, 870 (1957). Individual sections of an act should be interpreted in such a manner as to insure coordination with other sections of the act. State v. Meader, 184 Mont. 32, 37, 601 P.2d 386, 389 (1979). Subsections of a statute should be construed to avoid conflict between them. State ex rel. Depuy v. District Court, 142 Mont. 328, 332, 384 P.2d 501, 503 (1963).

Following these rules of statutory construction, I conclude that the two subsections of section 18-1-102, MCA, must operate independently of, rather than in conjunction with, each other. Subsection (1) would apply when the bidders on a particular contract include residents and nonresidents, and where the lowest responsible bid of a resident is not more than 3% higher than the lowest responsible bid of a nonresident. Subsection (2) would apply where the bidders include only residents or where the lowest responsible bidder is not a nonresident. Thus, in the example provided above, subsection (1) would operate to award the contract to the resident whose bid was no more than 3% higher than that of the nonresident, i.e., the bid of \$101. Because the factual situation triggers the application of subsection (1), subsection (2) would not come into operation at all. If section 18-1-102, MCA, is not interpreted in the manner described above, one part of the statute could operate in violation of the other, a result not favored in the law.

THEREFORE, IT IS MY OPINION:

A resident bidder whose materials are manufactured in Montana by Montana labor may not be awarded a state contract under section 18-1-102, MCA, when his bid is more than 3% higher than that of the lowest responsible nonresident bidder.

Very truly yours,


MIKE GREELY
Attorney General

mg/JB/sr

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 10

Mr. Hoyt said because that is an important section, he would like the secretary to note that the proponents of this bill have stated, and take the position, that the evil described in sections 7 and 8 are encompassed in the other four remaining out of the 14. He said they want a system that would work and a system that is fair. He said they hope that everybody can get together and live under rules that are rules of decency, good judgment, good business, good people and good environment.

Sen. Thayer asked Mr. Gray to respond to Mr. Hoyt's statement that if sections 7 and 8 are already covered why are they opposing them in the bill. Mr. Gray responded that each of the 14 provisions in the fair claims practices act are essentially a matter of degree and section 7 is already covered by section 6. He said it was their position that what needs to be done with the bill is to restrict the application of the bill to as few sections as possible, but include in those sections the worst kinds of conduct. They felt they have gone beyond that with six of the sections included where they started out with four.

Discussion followed concerning proposed amendments regarding the addition of sections 7 and 8 to the bill.

The question being called, the MOTION CARRIED UNANIMOUSLY with eight members present. The two absent members will be allowed the opportunity to vote on the bill, however, it would not change the outcome of the vote.

DISPOSITION OF HOUSE BILL NO. 417: Chairman Kolstad stated there were proposed amendments to the bill. The amendments were distributed to the committee members on March 11, 1987 along with a letter from Patrick Melby, which was shown as Exhibit 3 for that day.

For purposes of discussion, Sen. Neuman MOVED HB 417 BE CONCURRED IN, seconded by Sen. McLane.

Mr. Melby was requested to explain the proposed amendments. Mr. Melby said their first amendment submitted at the hearing was page 4, line 15, following "5%". The purpose of that amendment was to make it very clear that a manufacturer of Montana made products had to have both preferences in order to get the contract. The second amendment, he said, was attached to his letter (Exhibit 3 on 3/11/87) that was prepared on behalf of Norther School Supply and Johnson Controls, which would expand the definition of "resident" to include a foreign corporation that maintained a place of business in the state and who paid property taxes, directly or indirectly, and which employed up to 10 bonafide residents of the state. He said this was quite a departure from the bill as it was originally introduced.

Sen. Thayer MOVED ADOPTION OF THE FIRST AMENDMENT, seconded by Sen. Meyer. The MOTION CARRIED UNANIMOUSLY.

Sen. Thayer MOVED ADOPTION OF THE SECOND AMENDMENT, seconded by Sen. Boylan.

Sen. Thayer commented that Mr. Melby had said they were not opposed to the amendment. Mr. Melby said they were not personally opposed to the amendment but he was concerned that there would have been opposition to it had it been included in the bill originally. Sen. Thayer spoke in favor of the motion as they are trying to attract out-of-state businesses to come into Montana and companies that have done business in the state for a long time, employing people and paying taxes, should deserve some kind of fair treatment, however, he didn't know how legal that would be.

Sen. Neuman spoke against the amendment and said it would do away with the Montana preference and said he might be more comfortable with it if it said five or six years rather than one year. He felt it would include chain stores and give them the same preference. Mr. Melby said this would put K-Mart on the same footing as Columbia Paint and Columbia Chemical, who are manufacturers, as a local resident bidder.

Sen. Neuman said he would like to talk to a few other people as he felt it was a pretty significant change. He said the one year seemed kind of short.

Chairman Kolstad agreed with Sen. Neuman and felt that was a good suggestion; to talk to some of the other people connected with this bill. Sen. Neuman pointed out that the revenue transmittal deadline was coming up on the following Monday and felt they could wait until after that to take further action on the bill.

Sen. Thayer WITHDREW HIS MOTION TO ADOPT THE SECOND AMENDMENT, and Sen. Boylan withdrew his second. Sen. Neuman then WITHDREW HIS ORIGINAL MOTION TO CONCUR IN HB 417.

The next meeting for the Business & Industry Committee was set for Friday, March 13, 1987. There being no further business before the committee, the meeting adjourned at 11:25 a.m.


SEN. ALLEN C. KOLSTAD, CHAIRMAN

Business & Industry COMMITTEE
50th LEGISLATIVE SESSION -- 1987

Date 3/12/87

NAME	PRESENT	ABSENT	EXCUSED
ALLEN C. KOLSTAD, CHAIRMAN	✓		
TED NEUMAN, VICE CHAIRMAN	✓		
PAUL BOYLAN	✓		
TOM HAGER	✓		
HARRY H. McLANE	✓		
DARRYL MEYER	✓		
GENE THAYER	✓		
MIKE WALKER	✓		
CECIL WEEDING	✓		
BOB WILLIAMS	✓		

Each day attach to minutes.

3-12-87

Business & Industry

EXECUTIVE ACTION ON HOUSE BILL NO. 417: This bill sponsored by Representative Jan Brown would provide preference to bidders with Montana-made goods in awarding contracts.

MOTION: A motion was made by Senator Thayer and seconded by Senator Walker that HB 417 be amended. The amendment is just some technical changes. Motion carried.

Further amendments offered could be found on page 5, line 24. A person would be considered a resident if the person had been in business in the state for one year; and maintains a place of business within the state which pays property taxes; and employs on an annual basis the equivalent of 10 residents. This would take care of places like Northern School Supply in Great Falls.

Senator Thayer suggested that the one year be changed to five years.

Senator Hager stated that he is in favor of the bill. There are a number of egg producers that ship eggs into Montana.

MOTION: A motion was made by Senator Thayer to change the one year to five years. Motion carried.

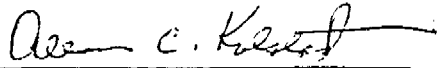
MOTION: A motion was made by Senator Walker to further amend House Bill No. 417 beginning on page 5, following line 24.

MOTION: A motion was made by Senator Walker and seconded by Senator Hager that House Bill No. 417 BE CONCURRED IN AS AMENDED. Motion carried.

Senator Walker will carry this bill on the floor of the Senate.

The next meeting will be held on Tuesday, March 17, 1987 at 10:00 a.m.

ADJOURN: With no further business the meeting was adjourned at 12:00 noon.


SENATOR ALLEN C. KOLSTAD
Chairman

NAME	PRESENT	ABSENT	EXCUSED
ALLEN C. KOLSTAD, CHAIRMAN	✓		
TED NEUMAN, VICE CHAIRMAN	✓		
PAUL BOYLAN	✓		
TOM HAGER	✓		
HARRY H. McLANE	✓		
DARRYL MEYER	✓		
GENE THAYER	✓		
MIKE WALKER	✓		
CECIL WEEDING			✓
BOB WILLIAMS			✓

Each day attach to minutes.

March 16

19.87

MR. PRESIDENT

We, your committee on.....**BUSINESS & INDUSTRY**.....

having had under consideration.....**HOUSE BILL**..... No. **417**.....

Third reading copy (blue)
color

**PROVIDE PREFERENCE TO BIDDERS WITH MONTANA MADE GOODS IN
AWARDING CONTRACTS**

BROWN (WALKER)

Respectfully report as follows: That.....**HOUSE BILL**..... No. **417**.....

be amended as follows:

1. Page 2, line 21.

Following: " (1) "

Insert: " (a) "

2. Page 3, line 6.

Strike: " (a) "

Insert: " (i) "

3. Page 3, line 14.

Strike: " (i) "

Insert: " (A) "

4. Page 3, line 15.

Strike: " (ii) "

Insert: " (B) "

5. Page 3, line 19.

Strike: " (b) "

Insert: " (ii) "

6. Page 4, line 2.

Strike: " (i) "

Insert: " (A) "

7. Page 4, line 7.

Strike: " (ii) "

Insert: " (B) "

~~DO NOT PASS~~

~~DO NOT PASS~~

.....**CONTINUED**.....

Chairman.

March 16 1987

8. Page 4, line 10.

Strike: "(iii)"

Insert: "(C)"

9. Page 4, line 12.

Strike: "1"

Insert: "."

10. Page 4, lines 13 and 14.

Strike: "HOWEVER, (IV)"

Insert: "(b)(1) If both subsections (1)(a)(ii)(B) and (1)(a)(ii)(C) are applicable to bids for a contract, the contract must be awarded to the resident bidder whose offered goods are Montana-made if the bid is:

(A) not more than 3% higher than that of a resident bidder whose offered goods are not Montana-made; and

(B) not more than 5% higher than that of the nonresident bidder.

(ii) However."

11. Page 5, following line 24.

Insert: "(4) For the purposes of 18-1-102(1)(a)(ii) and under rules adopted by the department, a foreign corporation or a subsidiary, affiliate, or operating branch of a corporation may be considered a resident by a public agency if it:

(a) has conducted a bona fide business within the state for not less than 5 years;

(b) maintains a place of business within the state by which it directly or indirectly pays property taxes in the state; and

(c) employs on an annual basis the equivalent of 10 residents as defined in 18-2-401."

Renumber: subsequent subsection

AND AS AMENDED,
BE CONCURRED IN

ALLEN C. KOLSTAD, Chairman

STATUS SHEET

50th LEGISLATIVE SESSIONBUSINESS AND LABOR

COMMITTEE

HOUSE BILL NUMBER	ENTERED COM. DATE	DATE CON- SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON- CURRED IN DATE	BE NOT CON- CURRED IN DATE	BE CON- CURRED IN AMENDED DATE	BE CON I AM D
381	1/24/87	2/3/87	2/6/87			2/6/87					
386	1/23/87	1/29/87	tabled 1/29/87	lifted 2/3/87							
389	1/23/87	2/3/87	2/11/87 2/3/87			2/11/87 2/3/87					
401	1/23/87	2/3/87	2/3/87			2/3/87					
411	1/23/87	2/3/87	2/3/87			2/3/87					
414	1/24/87	2/4/87	2/4/87	2/4/87							
415	1/24/87	2/4/87	tabled 2/4/87								
417	1/24/87	2/5/87	2/19/87			2/19/87					
420	1/24/87	2/12/87	tabled 2/12/87								
425	1/24/87	2/5/87	tabled 2/5/87								
426	1/24/87	2/4/87	2/11/87	2/11/87							
432	1/24/87	2/5/87	2/6/87				2/6/87				
433	1/24/87	2/4/87	2/4/87			2/4/87					
437	1/24/87	2/5/87	2/6/87			2/6/87					

Use a separate sheet for Senate Bills, House Bills, and Resolutions.

the hearing upheld allegations; or revoke or suspend the license completely; or a court order which was sure to be repealed as well. She submitted a letter as an example of the case where a letter was sent regarding the violations of the company. Exhibit No. 12 (a).

She said in the above case, knowing that the company would ignore her and continue the unlawful practices meant the only alternative was to alert the public of these problems, and issued a press release. Exhibit No. 12 (b).

She stated the insurance company then filed a demand for a hearing and automatic stay against the letter. Exhibit No. 12 (c).

In this case, cease and desist orders could have been issued to prohibit the company from continuing to engage in its deceptive marketing actions. She said the provisions of the bill present an opportunity for a full hearing; due process is fully protected and only a particular action is targeted. She stated that the legislation provides both effective and fair enforcement methods that allows consumer protection and fair treatment of the violator.

Roger McGlenn, Executive Director, Independent Insurance Agents Association of Montana. Mr. McGlenn stated he supports the bill and the amendments.

OPPONENTS

None.

QUESTIONS

None.

CLOSING

Rep. Swysgood made no further comments.

HOUSE BILL NO. 417 - Provide Preference to Bidders With Montana Made Goods in Awarding Contracts, sponsored by Rep. Jan Brown, House District No. 46, Helena. Rep. Brown stated that this bill is Montana preference bill, and that Pat Melby would explain the bill.

PROPONENTS

Pat Melby, representing Columbia Paint Company, Helena. Mr. Melby reviewed the bill and stated that it clarifies the application of the preference for a resident bidder with a Montana made product, and in asking for the clarification,

they were willing to give up what they interpret as having a 6% preference over a nonresident bidder for a 5% preference. He submitted a copy of the present preference statute. Exhibit No. 13.

Mr. Melby further commented that the bill assumes that every contract will include a nonresident bidder, will go to the resident bidder with the Montana made products, and will be 5% higher than a nonresident bid. He stated if a New York distributor of Montana made goods is bidding on a Montana contract and will supply Montana made goods, the distributor would be considered a resident for the purposes of this act. He submitted a list of examples of how the preference law is applied under the current law under the attorney general's interpretation, under their interpretation, and how it would be applied if this bill passed. Exhibit No. 14.

Mr. Melby said that this bill would help Montana businesses to encourage producers of Montana made products to get involved in bidding on contracts. He added that in the long run whatever small percentage or additional price that public agencies will have to pay for the products will be returned through the state through increased tax dollars.

Eric Shindler, Financial Administrative Vice President, Columbia Pain Company, Helena. Mr. Shindler stated that they annually bid on Montana traffic paint contract, and annually run into an occurrence where out of state bidders approach another Montana business who does not manufacture paint, but in the course of business, use paint and are able to get the same preference as his company. He said the idea behind the preference is if labor is involved within the preference, it increases the flow of dollars within the community and that is what a preference should be.

Ken Kelly, representing Dairy Industry Processors. Mr. Kelly stated that the milk board sets the minimum prices that everyone pays for the milk, and the price is not on the bids anymore. He added that the names are drawn for the winner of the contract bid, and the purchasing department is uncomfortable with that type of arrangement.

Mr. Kelly also commented that recently on a bid in Great Falls one of the dairies was eliminated from consideration because the corporate headquarters was out of state. He said the dairy qualified under section 18-1-103, but were eliminated under 18-1-113, and if that decision is left to stand, it will eliminate 65 percent of the dairy farmers in Montana from participating in a state contract because they sell to a corporation whose headquarters are outside Montana, and this should be corrected.

Gene Fenderson, Montana State Building and Construction Trade Workers. Mr. Fenderson stated they support the bill and believe it gives clarification to the law and puts the producers of goods produced in Montana on a fair footing with other states and is good for the Montana workers.

Jim Hodge, President, Owner, Columbia Chemical. Mr. Hodge stated this is an important piece of legislation because it affects them on a day to day basis. He said the intent of the bill was to support Montana manufacturers, and listed examples of out of state companies getting bids and having the same preference.

OPPONENTS

Pat McKelvey, McKelvey Paint and Distributor. Mr. McKelvey stated that this bill will take a majority of Montana vendors of building supplies to government purchasers and construction out of the public agency markets. He said the bill suggests that only one product or brand name is acceptable, and there are all kinds of dealers statewide that do not sell that line. He said this bill does not help the majority of Montana's businesses, but takes the greater majority out of the public bidding process. He added that if this bill passed it would provide bad legislation and something that could be challenged in the court as a restraintive trade action, and a manufacturer in Montana should have a competitive advantage over a manufacturing facility outside the state based on economic considerations.

QUESTIONS

Rep. Glaser asked if a building was built partially with Montana products, how would this be handled if only 15% of the building was made with Montana products, as this bill obviously gives a preference on 15% of the products. Mr. Melby replied the preference on Montana made products has been in effect since 1969 and is present now in any bid.

Rep. Glaser asked whether this had been changed previous to that. He said industry as a whole has never considered that they had a Montana made preference on a portion of a building, and is obvious to him that Montana products involved in a public building do have a preference. Mr. Melby replied that was correct and that law has been on the books for a number of years, but has not really been enforced.

Mike Muszkiewicz, Administrator, Purchasing Division, expanded on the point being made. He said the fiscal note was based on two commodities because they were the only ones significant enough to affect the state, and they were food and paint. He added if a state has a preference against the

product made in their state, when Montana goes to sell paint in another state, that state might have a reciprocal preference so there is a 5% added penalty against the state that has the original preference.

CLOSING

Rep. Brown made no further comments.

HOUSE BILL NO. 569 - Expand Applicability of Residency Definition Used in Preference Laws, sponsored by Rep. Edward Grady, House District No. 47, Canyon Creek. Rep. Grady stated this bill is an act that expands the applicability of the residency definition used in the preference laws concerning the awarding of public contracts.

PROPOSERS

Ken Kelly, representing Dairy Industry Processors. Mr. Kelly submitted written testimony. Exhibit No. 15.

Edward McHugh, Clover Leaf Dairy, Helena. Mr. McHugh stated that Meadow Gold Dairy, for example, should be allowed to have the 3% preferential for a Montana product, which would allow them to have the same price bid as a Montana corporation. He said this should be allowed as long as the product is produced and processed in Montana.

Pat Melby, representing Columbia Paint Company, Helena. Mr. Melby discussed the bill. He said this bill expands the applicability of the residency definition and amending the current law.

Larry Kaufman, President, Montana Dairymen's Association. Mr. Kaufman submitted written testimony. Exhibit No. 16.

OPPOSERS

None.

QUESTIONS.

None.

CLOSING

Rep. Grady stated he hoped the committee would consider this bill so that preference to Montana products will be given.

EXECUTIVE ACTION

ACTION ON HOUSE BILL NO. 417 AND NO. 569

Chairman Kitselman referred House Bill No. 417 and House Bill No. 569 to a subcommittee composed of Rep. Glaser, Rep. Driscoll and Rep. Brandewie, with Rep. Glaser as chairman.

COMMITTEE BILL REQUEST

Mary Westwood, staff attorney, for the Montana Sulphur and Chemical Company of Billings stated that they are seeking support for a bill to be drafted by the Business and Labor Committee. Ms. Westwood commented that many small businesses have faced difficult decisions recently concerning liability insurance. She stated the Montana Sulphur and Chemical Company is the primary pollution control plant for Exxon and Conoco, and the largest producers of purified hydrogen sulphite in the United States. She said they have problems because they produce purified hydrogen sulphite which is considered a hazardous material. She said that because of having such difficulty in obtaining liability insurance at a reasonable price, they began setting aside funds from the company assets to form a self insurance fund; funds such as this are not authorized by legislation. In order to lighten the tax burden, she added, they have been putting the money into tax exempt bonds.

Ms. Westwood stated that this bill would allow small businesses to establish these independent liability funds and to receive the same kind of tax treatment that insurance companies receive. She said they have drafted a bill after conversations with the Insurance Commissioner, which provides for oversight of the funds by the Insurance Commissioner. She added that the bill would provide that there be a policy set in case of termination of the funds. Also, she said the fund would work like a pension plan; the tax on the funds would be deferred until such a time that the money is taken out because there would be no further liability. She said that many small businesses in Montana do not have any insurance, and in case of a catastrophic liability incident and the business goes out of business, there would be no funds available for the person who might be injured. She feels that this bill would protect the public. Exhibit No. 17.

QUESTIONS

Chairman Kitselman asked Ms. Westwood if the problem was that there were no means to find an environmental type of insurance coverage in case of a chemical spill. Ms. Westwood replied that they were offered policies, but they have an exclusion in them called a pollution exclusion. She

DAILY ROLL CALL

BUSINESS & LABOR

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date February 5, 1987

NAME	PRESENT	ABSENT	EXCUSED
REP. LES KITSELMAN, CHAIRMAN	✓		
REP. FRED THOMAS, VICE-CHAIRMAN	✓		
REP. BOB BACHINI	✓		
REP. RAY BRANDEWIE	✓		
REP. JAN BROWN	✓		
REP. BEN COHEN	✓		
REP. JERRY DRISCOLL	✓		
REP. WILLIAM GLASER	✓		
REP. LARRY GRINDE	✓		
REP. STELLA JEAN HANSEN	✓		
REP. TOM JONES	✓		
REP. LLOYD MCCORMICK	✓		
REP. GERALD NISBET	✓		
REP. BOB PAVLOVICH	✓		
REP. BRUCE SIMON	✓		
REP. CLYDE SMITH	✓		
REP. CHARLES SWYSGOOD	✓		
REP. NORM WALLIN	✓		

COMMITTEE

DATE February 5, 1987

CS-33

He said that the problem with the preferred provider is the group raises the deductible which increases the cost to the person who is insured.

Rep. Grinde moved a substitute motion that House Bill No. 799 BE TABLED. The motion carried with Reps. Cohen and Thomas opposed.

ACTION ON HOUSE BILL NO. 803

Rep. Thomas moved that House Bill No. 803 DO PASS.

Rep. Thomas moved the amendment to strike the new section on page 27 regarding the bond requirements, beginning on line 18. He said this is excessive and there is no proof that it is needed. The motion carried unanimously.

Rep. Brandewie said he agreed with Rep. Thomas, and that bonds were getting impossible to acquire.

Rep. Thomas moved the statement of intent. The motion carried unanimously.

Rep. Thomas moved that House Bill No. 803 DO PASS AS AMENDED. The motion carried unanimously.

ACTION ON HOUSE BILL NO. 417

Rep. Brown moved that House Bill No. 417 DO PASS.

Rep. Brown moved the amendments. The motion carried unanimously. See Standing Committee Report.

Rep. Brown moved that House Bill No. 417 DO PASS AS AMENDED. The motion carried unanimously.

Rep. Brandewie moved the statement of intent. The motion carried unanimously.

ADJOURNMENT

The meeting was adjourned at 11:30 a.m.



REP. LES KITSELMAN, Chairman

DAILY ROLL CALL

BUSINESS & LABOR

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date February 19, 1987

NAME	PRESENT	ABSENT	EXCUSED
REP. LES KITSELMAN, CHAIRMAN	✓		
REP. FRED THOMAS, VICE-CHAIRMAN	✓		
REP. BOB BACHINI	✓		
REP. RAY BRANDEWIE	✓		
REP. JAN BROWN	✓		
REP. BEN COHEN	✓		
REP. JERRY DRISCOLL	✓		
REP. WILLIAM GLASER	✓		
REP. LARRY GRINDE	✓		
REP. STELLA JEAN HANSEN	✓		
REP. TOM JONES	✓		
REP. LLOYD MCCORMICK	✓		
REP. GERALD NISBET	✓		
REP. BOB PAVLOVICH	✓		
REP. BRUCE SIMON	✓		
REP. CLYDE SMITH	✓		
REP. CHARLES SWYSGOOD	✓		
REP. NORM WALLIN	✓		

Mr. Speaker: We, the committee on BUSINESS AND LABOR

report HOUSE BILL NO. 417

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☒ as amended
☒ statement of intent attached

REP. LES KITSELMAN

Chairman

AMENDMENTS AS FOLLOWS

1) Title, line 12
Following: "PREFERENCES;"
Insert: "AND"

2) Title, line 13
Strike: "18-5-308,"

3) Title, line 14
Strike: "; AND REPEALING SECTION 18-1-111, MCA"

4) Page 3, line 3
Strike: "equipment"
Insert: "material"

5) Page 4, line 10
Following: "Whichever"
Insert: "; however,
(iv) no combination of preferences under this
subsection may exceed 5%"

6) Page 7, line 8 through 15
Strike: Section 5 in its entirety
Repeal: Subsequent sections

7) Page 8, line 12
Following: "shall"
Insert: "either have on file with or"

8) Page 8, line 19
Following: "agency"
Strike: ", together with and"
Insert: "with its"

9) Page 9, line 6
Strike: "employers"
Insert: "agencies"

10) Page 9, lines 7 and 8
Strike: Section 9 in its entirety
Re-number: subsequent section

11) Page 9, line 10
Strike: "7"
Insert: "6"
Strike: "8"
Insert: "7"

12) Page 9, line 12
Strike: "7"
Insert: "6"
Strike: "8"
Insert: "7"

STATEMENT OF INTENT

A statement of intent is required for this bill because section 9 authorizes the Department of Administration to adopt rules necessary to administer the preferences provided in Title 18, chapter 1, part 1. The legislature intends that the rules should prevent bidders from circumventing the preference provisions by creating business entities specifically to obtain residency status or to gain an award of a public contract for goods after being disqualified for submitting a false affidavit. The rules should also specify the contents of an affidavit to be submitted by a bidder as required under section 7.